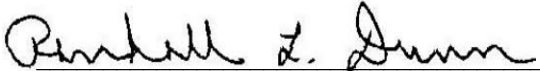


Below is an Opinion of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
PACIFIC CARGO SERVICES, LLC,) No. 13-30439-tmb7
Debtor.) MEMORANDUM OPINION

On August 30, 2013, I held a final evidentiary hearing ("Hearing") on General Electric Capital Corporation's ("GE Capital") motion to vacate ("Motion to Vacate") the Order (I) Authorizing and Approving Asset Purchase Agreement by and between Hilco Industrial, LLC or its Designee and Debtor; (II) Authorizing and Approving Sale of Certain Assets of Debtor Free and Clear of Liens; and (III) Granting Certain Related Relief (the "Hilco Sale Order"), entered on July 31, 2013 in the above-captioned case. Following the presentation of evidence, including live testimony, and hearing argument from counsel, I took the matter under advisement.

Since the Hearing, I have reviewed the pleadings and legal memoranda filed by GE Capital and Hilco Industrial, LLC ("Hilco"), the admitted exhibits and my notes from the Hearing. I have considered

1 carefully the testimony and arguments presented. I further have taken
2 judicial notice of the relevant entries in the docket and documents filed
3 in the bankruptcy case of Pacific Cargo Services, LLC ("Pacific Cargo"),
4 Case No. 13-30439, for purposes of confirming and ascertaining facts not
5 reasonably in dispute. Federal Rule of Evidence 201; In re Butts, 350
6 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006). In addition, I have reviewed
7 relevant legal authorities, both as cited to me by the parties and as
8 located through my own research.

9 In light of that consideration and review, this Memorandum
10 Opinion sets forth the court's findings of fact and conclusions of law
11 under Civil Rule 52(a), applicable in this contested matter under Rules
12 7052 and 9014¹.

13 I. FACTUAL BACKGROUND

14 Pacific Cargo filed its petition for protection under chapter
15 11 on January 28, 2013. Docket No. 1. Pacific Cargo was an expedited
16 freight company, focusing on overnight deliveries. It operated in five
17 states with approximately 248 employees. From the outset, Pacific
18 Cargo's prospects for reorganization in chapter 11 apparently were
19 questionable. Pacific Cargo was kept on a very short leash concerning
20 use of secured creditor cash collateral. A total of nine interim orders
21 authorizing limited cash collateral use for "necessities, but no
22

23 ¹ Unless otherwise indicated, all chapter and section references are
24 to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references
25 are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
26 Federal Rules of Civil Procedure are referred to as "Civil Rules." The
Local Rules of the District Court for the District of Oregon are referred
to as "LR's" and the Local Rules for the Bankruptcy Court for the
District of Oregon are referred to as "LBR's."

1 niceties" were entered, with the last such order being entered on June 3,
2 2013, extending cash collateral use through July 23, 2013. See Docket
3 No. 305.

4 Ultimately, the decision was made to focus on a going concern
5 sale of Pacific Cargo's business in order to maximize value for creditors
6 and maintain employment opportunities for Pacific Cargo's employees. To
7 that end, Pacific Cargo applied to the court to approve the retention of
8 Equity Partners CRB LLC ("Equity Partners") as the broker for the sale of
9 Pacific Cargo's business and some or all of its assets. See Docket No.
10 261. Equity Partners was selected for that task after a substantial
11 investigation and interview process by Pacific Cargo, its primary secured
12 creditor, Graystone Capital ("Graystone"), and the creditors' committee
13 ("Committee"). Equity Partners' employment was conditionally approved,
14 with a further period to object, by order entered on June 3, 2013. See
15 Docket No. 298. Equity Partners specifically was engaged to:

16 (a) inspect the Debtor's assets (the "Assets") to
17 determine their physical condition; (b) prepare a
18 program to market the Assets; (c) prepare the
19 advertising letters, fliers and/or similar sales
20 materials, which would include information regarding
21 the Assets; (d) endeavor to locate parties who may
22 have an interest in becoming a joint venture partner,
23 investing in, acquiring, or refinancing the Debtor's
24 business or the Assets; (e) circulate materials to
25 interested parties regarding the Assets, after
26 completing confidentiality documents; (f) communicate
and negotiate with and obtain offers from interested
parties and make recommendations to Debtor as to
whether or not a particular offer should be accepted;
(g) communicate regularly with Debtor in connection
with the status of Equity Partners' efforts with
respect to the disposition of the Assets, including a
weekly written report to all Parties-in-Interest; (h)
if requested by Debtor, negotiate with various
stakeholders of the Debtor, including but not limited
to, secured and unsecured creditors and equity

1 shareholders, in regards to the possible financial
2 restructuring of the existing claims of the creditors
3 and/or equity stakeholders of the Debtor; (i)
4 recommend to Debtor the proper method of handling any
5 specific problems encountered with respect to the
marketing or disposition of the Assets; and (j)
perform related services necessary to maximize the
proceeds to be realized for the Assets.

6 See Docket No. 298, at p.1. After an objection was filed, Equity
7 Partners' engagement was finally approved, following a hearing, by an
8 amended order entered on June 25, 2013. See Docket Nos. 331 and 335.

9 Although Equity Partners engaged in a substantial marketing
10 effort, including setting up a data room for review of documents and
11 information relating to Pacific Cargo, placing an advertisement in the
12 Wall Street Journal, directing targeted outreach, including mailings, to
13 potential buyers, and fielding expressions of interest from dozens of
14 potential buyers (see Docket No. 327, at p.3), the proposed vehicle for
15 moving Pacific Cargo's assets to a sale was a "stalking horse" bid to be
16 followed up by an auction. Pacific Cargo filed a motion ("Auction
17 Motion") to authorize and schedule the auction and authorize and approve
18 bidding procedures on June 13, 2013. See Docket No. 320. The United
19 States Trustee ("UST") objected to the Auction Motion on a number of
20 grounds. See Docket No. 326. After a contested hearing, the Auction
21 Motion was granted with modifications required by the bankruptcy court.
22 See Docket No. 331. An order ("Auction Order") approving the Auction
23 Motion was entered on June 25, 2013. See Docket No. 338. The Auction
24 Order was served on GE Capital by mail and electronically on its local
25 counsel and counsel of record and to the post office address specified on
26 GE Capital's proof of claim ("Proof of Claim"). See Exhibit R. In the

1 Proof of Claim, GE Capital asserted a secured claim in the amount of
2 \$1,005,289.78. See Exhibit 4. The Auction Order was not appealed and is
3 final.

4 The "stalking horse" bid that was used to get the auction
5 process moving was a "low ball" offer that was not expected to end up as
6 the winning bid. Complicating the auction sale effort was the fact that
7 Pacific Cargo had a number of secured creditors who potentially could end
8 up credit bidding for their particular items or groupings of collateral.
9 Consequently, the auction was structured so that bidders not only could
10 bid on all of Pacific Cargo's assets to acquire the entire business, but
11 also could bid on various "lots" of assets, encompassing the collateral
12 of the various secured creditors, of which GE Capital was one.

13 The Notice of Intent ("Notice of Intent") to auction Pacific
14 Cargo's assets, advising of the auction date and time as July 23, 2013 at
15 9:00 am, and further advising that a hearing to approve auction sale
16 results and to consider any objections would be held on July 23, 2013 at
17 1:30 pm, was served by mail and electronically on July 10, 2013. See
18 Docket No. 357. The Notice of Intent was served by mail on GE Capital 1)
19 to the attention of its registered agent, CT Corporation System, at 388
20 State Street, Ste. 420, Salem, OR 97301; 2) to POB 3083, Cedar Rapids, IA
21 52406-3083, the address set forth on GE Capital's Proof of Claim; and 3)
22 to its local counsel and counsel of record, Wilson C. Muhlheim, Luvaas
23 Cobb, 777 High Street #300, Eugene, OR 97401-2750, electronically as well
24 as by mail. See Exhibits 4 and K. GE Capital contests receiving some or
25 all of said communications/mailings.

26 Pacific Cargo filed a motion to sell its assets free and clear

1 of liens, claims and encumbrances outside of the ordinary course of
2 business ("Sale Motion") on July 11, 2013. See Docket No. 358. The
3 certificate of service for the Sale Motion reflects that it was served on
4 July 11, 2013, on GE Capital's registered agent, CT Corporation System,
5 and on its local counsel and counsel of record, both electronically and
6 by mail. See Docket No. 358, Certificate of Service. Again, GE Capital
7 contests receiving service of the Sale Motion.

8 The auction proceeded as scheduled on July 23, 2013, overseen
9 by Equity Partners' personnel. However, it did not conclude fully that
10 day. During a hearing late in the afternoon on July 23rd, counsel for
11 Pacific Cargo reported that three vehicle lots had been sold based on the
12 credit bids of their three respective secured creditors: PACCAR Financial
13 Corp. ("Paccar") for \$450,002; Ford Motor Credit Corp. ("FMCC") for
14 \$211,000; and Ally Financial, Inc. ("Ally") for \$119,000. See Docket
15 Nos. 393 and 394. The auction sales concluded the following day,
16 July 24, 2013. At a hearing late in the afternoon on July 24th, counsel
17 for Pacific Cargo reported that Postal Express, Inc. ("Postal Express")
18 was the successful bidder for Lots 1 and 4, encompassing office
19 furniture, and some machinery and equipment, as well as customer lists,
20 intellectual property, etc., for \$125,000. Hilco was the high bidder to
21 purchase Lot 2, encompassing the eleven delivery trucks in which GE
22 Capital had a security interest ("GE Trucks"), for \$180,000; and
23 Graystone purchased remaining accounts receivable by means of a credit
24 bid. Pacific Cargo requested § 363(m)² "good faith" purchaser

25
26 ² Section 363(m) provides as follows: "The reversal or modification
(continued...)"

1 determinations as to the various buyers at the auction, but no evidence
2 to support "good faith" purchaser findings was presented at the hearings
3 on either July 23rd or 24th. See Docket No. 402. GE Capital did not
4 appear and did not participate in the auction.

5 An order approving the sale of the Lots 1 and 4 assets to
6 Postal Express was entered on July 25, 2013. See Docket No. 405.
7 Graystone waived its security interest in the assets sold to Postal
8 Express so that all net proceeds from the Postal Express sale were to be
9 paid to Pacific Cargo's bankruptcy estate. See Docket No. 405, at pp.6-
10 7.

11 On July 30, 2013, the UST filed an expedited motion to convert
12 or dismiss Pacific Cargo's chapter 11 case. See Docket Nos. 424 and 425.

13 On July 31, 2013, orders were entered approving the sales to
14 Paccar, FMCC and Ally. See Docket Nos. 429, 430 and 431. An order
15 approving the sale to Hilco ("Hilco Sale Order") was entered on the same
16 day. See Docket No. 432. The Hilco Sale Order included the following
17 findings:

18 I. The Debtor may sell the Assets free and clear of
19 all liens, claims, encumbrances and interests because
20 each entity with a security interest in the Assets to
21 be transferred on the Closing Date either (a) has
22 consented to the Sale; (b) could be compelled in a
23 legal or equitable proceeding to accept a money
24 satisfaction of such interest; or (c) otherwise falls

25 ²(...continued)
26 on appeal of an authorization under subsection (b) or (c) of this section
of a sale or lease of property does not affect the validity of a sale or
lease under such authorization to an entity that purchased or leased such
property in good faith, whether or not such entity knew of the pendency
of the appeal, unless such authorization and such sale or lease were
stayed pending appeal."

1 within the provisions of 363(f) of the Bankruptcy
2 Code, and therefore, in each case, one or more of the
3 standards set forth in section 363(f)(1)-(5) of the
4 Bankruptcy Code has been satisfied. Those holders of
5 liens, claims encumbrances and interests who have been
properly noticed and who did not object to the Sale
Motion are deemed to have consented pursuant to
section 363(f)(2) of the Bankruptcy Code.

6 See Docket No. 432, at p.3. The Sale Order reflects that Hilco purchased
7 the GE Trucks for \$180,000 and that Pacific Cargo's bankruptcy estate
8 would receive ten percent (\$18,000) of the sale proceeds. Id. at pp.2-4.

9 Pacific Cargo filed its own motion to convert its chapter 11
10 case to chapter 7 on August 1, 2013, supporting the UST's motion to
11 convert, because Pacific Cargo's assets had been sold, and it no longer
12 was operating. See Docket No. 441.

13 An order authorizing Pacific Cargo's sale of accounts
14 receivable to Graystone was entered on August 2, 2013. See Docket No.
15 451.

16 Following an expedited hearing, and based on the motions of the
17 UST and Pacific Cargo, the bankruptcy court entered an order converting
18 Pacific Cargo's chapter 11 case to chapter 7 on August 2, 2013. See
19 Docket No. 455.

20 On August 8, 2013, GE Capital filed the Motion to Vacate,
21 alleging that it first heard about the sale of the GE Trucks to Hilco
22 when Hilco's representatives contacted GE Capital to obtain titles to the
23 trucks. See Docket No. 465, particularly at p.3. GE Capital argued that
24 the Hilco Sale Order should be vacated because 1) GE Capital did not
25 receive proper notice of the sale; and 2) the GE Trucks were sold for far
26 below fair market value, resulting in a windfall to Hilco. Id. at 4-5.

1 Hilco responded, arguing that GE Capital in fact received appropriate
2 notice of the sale, and the sale was the result of a competitive auction
3 at which Hilco participated in good faith. See Docket No. 479. The
4 Hearing and further briefing were scheduled at a preliminary hearing held
5 on August 16, 2013. See Docket No. 483.

6 II. JURISDICTION

7 I have jurisdiction to decide the Motion to Vacate under 28
8 U.S.C. §§ 1334, 157(b)(1) and 157(b)(2)(A) and (N).

9 III. DISCUSSION

10 1. Standards for Deciding a Motion to Vacate.

11 In the Motion to Vacate, GE Capital cites both Civil Rules 59
12 and 60, applicable in bankruptcy proceedings under Rules 9023 and 9024,
13 respectively, as authority for vacating the Hilco Sale Order.

14 Under Civil Rule 59(a)(2), a bankruptcy court can revisit a
15 decision "for any reason for which a rehearing has heretofore been
16 granted in a suit in equity in federal court." The Ninth Circuit has
17 held that "[t]here are three grounds for granting new trials in court-
18 tried actions under [Civil] Rule 59(a)(2): (1) manifest error of law; (2)
19 manifest error of fact; and (3) newly discovered evidence." Brown v.
20 Wright, 588 F.2d 708, 710 (9th Cir. 1978). I have broad discretion in
21 determining whether to grant a motion to vacate a decision, and such
22 motions "should not be granted in the absence of highly unusual
23 circumstances." Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th
24 Cir. 1999).

25 Civil Rule 60(b) sets forth additional grounds for granting
26 relief from a final judgment or order. The grounds alleged by GE Capital

1 in the Motion to Vacate are under Civil Rule 60(b)(1), "mistake,
2 inadvertence, surprise, or excusable neglect," and 60(b)(4), "the
3 judgment [or order] is void." In bankruptcy cases, Civil Rule 60(b) has
4 generally been held to constitute an extraordinary remedy, and the
5 Supreme Court has stated that Civil Rule 60(b)(4), in particular,
6 "applies only in the rare instance where a judgment is premised either on
7 a certain type of jurisdictional error or on a violation of due process
8 that deprives a party of notice or the opportunity to be heard." United
9 Student Aid Funds, Inc. v. Espinosa, 130 S. Ct. 1367, 1377 (2010).

10 Whether I consider the Motion to Vacate under Civil Rule 59 or
11 60, GE Capital bears the burden of proof to establish that it is entitled
12 to the relief it requests. See, e.g., Kona Enterprises, Inc. v. Estate
13 of Bishop, 229 F.3d 877, 890 (9th Cir. 2000); In re Worldcom, Inc., 382
14 B.R. 610, 620 (Bankr. S.D.N.Y. 2008); Cassidy v. Tenorio, 856 F.2d 1412,
15 1415 (9th Cir. 1988).

16 In light of these standards, I consider the parties' arguments
17 in support of and opposing the relief requested in the Motion to Vacate.

18 2. Adequate Notice.

19 The Rules have a lot to say about notices of bankruptcy sales.
20 Rule 2002(a)(2) provides that creditors shall be given at least 21 days'
21 notice by mail of "a proposed use, sale, or lease of property of the
22 estate other than in the ordinary course of business, unless the court
23 for cause shown shortens the time or directs another method of giving
24 notice." Rule 2002(g)(1)(A) provides that notices required to be mailed
25 to a creditor under Rule 2002 shall be addressed to such creditor at the
26 mailing address specified in the creditor's filed proof of claim.

1 Rule 6004(a), as applicable, consistently requires that
2 "[n]otice of a proposed use, sale, or lease of property, . . . not in
3 the ordinary course of business shall be given pursuant to Rule
4 2002(a)(2)" However, Rule 6004(c) further provides that, "A
5 motion for authority to sell property free and clear of liens or other
6 interests shall be made in accordance with Rule 9014 and shall be served
7 on the parties who have liens or other interests in the property to be
8 sold. The notice required by subdivision (a) of this rule shall include
9 the date of the hearing on the motion and the time within which
10 objections may be filed and served on the debtor in possession or
11 trustee." In turn, Rule 9014(b) requires that a motion in a contested
12 matter, such as a Rule 6004(c) motion to sell property free and clear of
13 liens, "shall be served in the manner provided for service of a summons
14 and complaint by Rule 7004." Rule 7004(b) provides that service within
15 the United States may be made by first class mail, postage prepaid.
16 Specifically applicable in this case is Rule 7004(b)(3), which requires
17 that such service on a United States corporation be made by mailing a
18 copy of the motion "to the attention of an officer, a managing or general
19 agent, or to any other agent authorized by appointment or by law to
20 receive service of process." In other words, a motion for authority to
21 sell property of the bankruptcy estate outside of the ordinary course of
22 business, free and clear of liens, must be served by first class mail on
23 an authorized representative of the lien holder who will have some
24 understanding as to what the piece of paper they have received in the
25 mail actually means.

26 GE Capital asserts three arguments in support of its position

1 that Pacific Cargo's notice of the sale of GE Capital's collateral was
2 inadequate: 1) the Sale Motion was not served at the address specified in
3 GE Capital's Proof of Claim; 2) the Notice of Intent noticed a hearing on
4 less than the twenty-one days mandated in Rule 2002; and 3) notice of the
5 sale of GE Capital's collateral should have been sent to GE Capital's
6 lead counsel, Reed Smith, LLP. I consider each of these arguments in
7 turn.

8 A. Appropriate Service

9 At the Hearing, Pacific Cargo's counsel, Margot Lutzenhiser,
10 testified, without contradiction, that following the filing of GE
11 Capital's Proof of Claim, Pacific Cargo's mailing matrix was amended to
12 incorporate GE Capital's mailing address specified in the Proof of Claim.
13 Both Ms. Lutzenhiser and David Cakarnis, the managing partner of DTI, aka
14 Bridge City Legal, the entity hired to handle the matrix mailing of the
15 Notice of Intent, testified credibly as to their supervision of the
16 mailing of the Notice of Intent so that the notice was properly addressed
17 and mailed by first class mail, postage prepaid, to all interested
18 parties listed on Pacific Cargo's mailing matrix and to all parties
19 entitled to Rule 7004 notice. In fact, the amended certificate of
20 service for the Notice of Intent reflects such service on July 11, 2013
21 and further reflects service on GE Capital at its Proof of Claim address,
22 on its registered agent and on its counsel of record. See Exhibit K.
23 Copies of the Sale Motion were properly addressed and mailed to GE
24 Capital's registered agent, as required by Rules 6004(c), 9014(b) and
25 7004(b)(3), and to GE Capital's counsel of record. See Docket No. 358.
26 The Auction Order was properly addressed and mailed to GE Capital at the

1 address specified on its Proof of Claim and to its counsel of record on
2 June 26, 2013. See Exhibit R.

3 In the Ninth Circuit, "[t]he mailing of a properly addressed
4 and stamped [notice] creates a rebuttable presumption that the addressee
5 received it." Morris v. Peralta (In re Peralta), 317 B.R. 381, 386 (9th
6 Cir. BAP 2004), citing Moody v. Bucknum (In re Bucknum), 951 F.2d 204,
7 207 (9th Cir. 1991). "A certificate of mailing raises the presumption
8 that the documents sent were properly mailed and received." In re
9 Peralta, 317 B.R. at 386 (citations omitted). Rebuttal of the
10 presumption requires clear and convincing evidence. In re Bucknum, 951
11 F.2d at 207.

12 The evidence as to receipt/nonreceipt by GE Capital of notice
13 of the sale of its collateral by Pacific Cargo is mixed. Elizabeth
14 Steel, a litigation specialist at GE Capital dealing with bankruptcy,
15 testified that she was assigned the Pacific Cargo matter. She testified
16 that she did not receive any of the notices relating to Pacific Cargo's
17 sale of GE Capital's collateral. She further testified that she received
18 a notice of sale of Pacific Cargo assets in which GE Capital did not have
19 a security interest, but otherwise, her first notice of the sale to Hilco
20 was when she was contacted by a Hilco representative to obtain vehicle
21 titles. However, she further testified that mailed bankruptcy notices
22 first were received by a coordinator and only then, sorted for delivery
23 to assigned bankruptcy specialists. See Exhibit O, at p.5. GE Capital's
24 counsel held up a sheaf of notices received at GE Capital with respect to
25 the Pacific Cargo bankruptcy, but the particular notices that were
26 received were not identified. Accordingly, the evidence reflects that GE

1 Capital received at least some of the documents sent to
2 creditors/interested parties in the Pacific Cargo case. Ms. Steel
3 credibly testified that she did not receive any notices relating to the
4 sale of GE Capital's collateral, but exactly what notices GE Capital in
5 fact received is not clear.

6 The record is clearer with respect to notices received by GE
7 Capital's registered agent, CT Corporation System. In response to
8 Hilco's First Request for Production of Documents, GE Capital produced a
9 written statement from CT Corporation System reflecting receipt of
10 "Notice, Asset Purchase Agreement, Exhibits, Motion" in Pacific Cargo's
11 bankruptcy case on July 12, 2013, noting "Response Due" on July 23, 2013.
12 See Exhibit P, at p.8. In its response to Hilco's Request for Admission
13 No. 7, GE Capital admits that CT Corporation received copies of the Sale
14 Motion and the Notice of Intent prior to the sale of Pacific Cargo's
15 assets. See Exhibit O, at p.6. However, there is no information given
16 as to what information was passed on to GE Capital by CT Corporation
17 System regarding the Pacific Cargo asset sale, and if information was
18 passed on, why GE Capital did not receive it or recognize its
19 significance.

20 Finally, the certificates of service reflect that the Notice of
21 Intent, the Sale Motion and the Auction order were served electronically
22 and by first-class mail on GE Capital's counsel of record and local
23 counsel, Wilson Muhlheim at the Luvaas Cobb law firm. LBR 9010-1(b)(1)
24 provides in relevant part:

25 Attorney of Record. An "attorney of record" is the
26 attorney upon whom service is to be made, and to whom
notices will be directed by the court. A party's

1 attorney of record will normally be the first attorney
2 admitted to practice before both the [Oregon State
3 Bar] and the district court that is named on the
initial document filed by the party.

4 In its response to Hilco's Request for Admission No. 3, GE
5 Capital admits that Luvaas Cobb was the attorney of record for GE Capital
6 in Pacific Cargo's bankruptcy case. See Exhibit O, at p.5 Mr. Muhlheim
7 signed a motion for relief from stay ("RFS Motion") filed by GE Capital
8 in the Pacific Cargo case as local counsel, and his name and his firm's
9 name appeared first on the first page of the pleading, along with
10 Nicole K. O'Sullivan of Reed Smith LLP ("Reed Smith"), as counsel for GE
11 Capital. See Exhibit 5. At the preliminary hearing on the RFS Motion,
12 Mr. Muhlheim appeared for GE Capital along with Aaron Chapin of Reed
13 Smith to report that the parties had a tentative agreement that needed to
14 be documented by an agreed order. See Exhibit 6. The order on the RFS
15 Motion that subsequently was entered was signed in behalf of GE Capital
16 only by Mr. Muhlheim. See Exhibit 7, at p.2.

17 GE Capital admitted in its response to Hilco's Request for
18 Admission No. 5 that Luvaas Cobb received ECF notice of both the Notice
19 of Intent and the Sale Motion. See Exhibit O, at p.5. Mr. Muhlheim
20 testified at his deposition that he received the Notice of Intent and the
21 Sale Motion through the ECF system, although he had no record of
22 receiving them through the mail. See Exhibit A, at pp.17, 21 and 25.
23 Mr. Muhlheim described the scope of his representation of GE Capital in
24 the Pacific Cargo case as follows:

25 [M]y job was to advise [Reed Smith] on local rules and
26 procedures, to appear in court as necessary, and
appear in the motion for relief from stay, and do

1 nothing further unless instructed to do so. That I
2 was not to be following the BNC [electronic] notices.

3 Exhibit A, at p.32. Mr. Muhlheim had no direct contact with GE Capital.
4 See Exhibit A, at pp.8 and 33.

5 Mr. Muhlheim is a very experienced, competent bankruptcy
6 attorney. If he had been authorized to review the electronic notices
7 being sent in the Pacific Cargo case, he would have understood
8 immediately the significance of the Notice of Intent and the Sale Motion
9 and would have communicated the urgency of considering and responding to
10 them to Reed Smith. He was not so authorized.

11 I can only assume that GE Capital limits the services to be
12 performed by its local counsel, such as Mr. Muhlheim, in bankruptcy cases
13 as an economy measure, and proceeding in that fashion undoubtedly saves
14 GE Capital money in many cases. However, every once in a while, such
15 cost saving may prove to be penny wise but pound foolish, and this is
16 such a case. I find that the steps taken by Pacific Cargo to provide
17 notice of the auction sale of its assets through the Notice of Intent and
18 the Sale Motion were reasonable, appropriate and adequate under the
19 Rules, and the evidence submitted by GE Capital at the Hearing is not
20 clear and convincing enough to overcome the presumption of the mailbox
21 rule.

22 B. Notice on Shortened Time

23 GE Capital complains that the Notice of Intent set a hearing on
24 Pacific Cargo's auction sale of its assets on less than the twenty-one
25 days' notice mandated by Rule 2002(a). Rule 2002(a) does generally
26 establish a requirement of twenty-one days' notice to parties in interest

1 of certain events and actions. However, Rule 2002(a)(2) specifically
2 provides for twenty-one days' notice of a proposed sale of estate assets
3 outside the ordinary course of business, "unless the court for cause
4 shown shortens the time" Judge Brown approved the auction sale
5 date after a contested hearing at which the UST opposed Pacific Cargo's
6 proposed auction procedures. In the Auction Order, Judge Brown found
7 that, "[t]he form of notice, attached as Exhibit 2 to this Order, is
8 reasonably calculated to provide sufficient notice to all creditors of
9 the Debtor's bid procedures and auction." See Docket No. 338, at p.3.
10 Judge Brown further found as follows:

11 Upon the oral motion of Debtor's counsel, the Court
12 hereby shortens the notice period required to provide
13 interested parties with notice of a sale pursuant to
14 Bankruptcy Rule 2002(a) from 21 days to nine (9) days
15 (plus three (3) days mailing). As such, providing
16 notice no later than July 11, 2013 will be considered
 good and sufficient notice for informing all parties
 in interest of the terms of a proposed sale that will
 act as the floor bid at the Auction and will be
 considered at the Approval hearing, if no higher bids
 are made.

17 See Docket No. 338, at p.4. As previously noted, the Auction order was
18 not appealed, and it now is final.

19 I further note, as far as the adequacy of notice to interested
20 parties on shortened time is concerned in this case, Paccar, FMCC and
21 Ally, all of which were secured parties in similar circumstances to GE
22 Capital, had sufficient notice to allow them to participate adequately
23 and effectively at the auction sale, and in fact, Ally and FMCC filed
24 objections in advance of the sale that were resolved. See Docket Nos.
25 373, 381, 382, 384, 430 and 431. In these circumstances, I conclude that
26 GE Capital's argument that holding Pacific Cargo's auction sale on

1 shortened notice time constituted error justifying vacation of the Hilco
2 Sale Order lacks merit.

3 C. Lack of Notice to Reed Smith

4 GE Capital argues that notice of the auction sale of its
5 collateral should have been provided to its lead counsel, Reed Smith.
6 Prior to filing the Motion to Vacate, Reed Smith's connection to the
7 Pacific Cargo bankruptcy case was limited. GE Capital filed a motion for
8 relief from stay on March 27, 2013. The names of Mr. Muhlheim, who
9 signed the motion, and Nicole Smith of Reed Smith appeared as counsel for
10 GE Capital on the motion. See Exhibit 5, at pp.5, 9. On April 16, 2013,
11 Mr. Muhlheim advised Pacific Cargo's counsel Tara Schleicher that Aaron
12 Chapin of Reed Smith was "the appropriate person to contact about Pacific
13 Cargo." See Exhibit 3, p.1. Thereafter, Mr. Chapin and Ms. Lutzenhiser
14 negotiated the terms of a stipulated order to resolve GE Capital's motion
15 for relief from stay. See Exhibit 3. However, the stipulated order was
16 signed by Mr. Muhlheim only as GE Capital's counsel. See Exhibit 7, at
17 p.2. Ms. Lutzenhiser testified that serving attorneys at Reed Smith with
18 documents in the Pacific Cargo case was never discussed.

19 In fact, as previously noted, GE Capital has admitted that Mr.
20 Muhlheim's firm, Luvaas Cobb, was GE Capital's attorney of record in the
21 Pacific Cargo case. Reed Smith never filed a special notice request in
22 the case, and Reed Smith attorneys Alexander Terras and Aaron Chapin did
23 not file applications for admission pro hac vice until after the Motion
24 to Vacate was filed. See Docket Nos. 466 and 481.

25 LR 83-3(a)(1), applicable in the bankruptcy court for the
26 District of Oregon under LBR 9010-1(a)(2)(C), provides that out-of-

1 district counsel may be admitted pro hac vice if they associate local
2 counsel "who will meaningfully participate in the preparation and trial
3 of the case." In a recent article in "For the District of Oregon," the
4 quarterly publication of the Oregon Chapter of the Federal Bar
5 Association, Magistrate Judge John V. Acosta and Richard Vangelisti
6 discuss "The Integral Role of Local Counsel in the District of Oregon."

7 Local counsel's presence and participation have not
8 been rendered obsolete by liberal rules for granting
9 pro hac vice admissions, the increase in cross-border
10 practice, or the availability of electronic filing.
11 Strong participation of effective local counsel better
12 serves the client and ensures that cases are handled
13 in conformity with local rules and custom and with the
14 level of professionalism expected of lawyers
15 practicing in the District of Oregon. . . . If there
16 is some doubt . . . on whether local counsel should
17 participate in some aspect of the case or court
18 proceeding, counsel should err on the side of
19 participation. Out-of-district counsel should inform
20 the client that the District of Oregon requires local
21 counsel to "meaningfully participate."

22 For the District of Oregon, Vol. XVII, No. 2, at p.1 (Summer 2013). LBR
23 9010-1(a)(2)(C) further provides that, "An attorney admitted pro hac vice
24 will not be considered an attorney of record."

25 Implicit in GE Capital's argument is the assumption that if
26 only the Notice of Intent and Sale Motion had been served on Mr. Chapin
of Reed Smith, he would have recognized their significance immediately,
and GE Capital's interests with respect to the auction sale of its
collateral could have been protected. Of course, the same analysis
applies if Mr. Muhlheim had only been authorized to review the ECF
notices sent to him and his firm by Pacific Cargo. As a bottom line
matter, Pacific Cargo served the Notice of Intent and Sale Motion
consistent with the requirements of the Rules. In addition, they were

1 served both by mail and electronically on GE Capital's counsel of record
2 under the LBR's. I find that the notices of the auction sale of GE
3 Capital's collateral by Pacific Cargo were adequate and legally
4 sufficient. I further conclude that GE Capital's due process rights were
5 not violated by the manner and timing with which the auction sale of GE
6 Capital's collateral by Pacific Cargo were noticed. Accordingly, I
7 reject GE Capital's arguments in support of the Motion to Vacate based on
8 its allegations of lack of and/or inadequate notice, and the sale of GE
9 Trucks to Hilco is not void.

10 3. Inadequate Value/Lack of Good Faith

11 The Ninth Circuit has emphasized the need for finality in
12 considering bankruptcy sales. See, e.g., Onouli-Kona Land Co. v. Estate
13 of Richards (In re Onouli-Kona Land Co.), 846 F.2d 1170, 1172 (9th Cir.
14 1988). GE Capital challenges the sale of its collateral to Hilco,
15 arguing that Hilco cannot be characterized as a "good faith" purchaser,
16 and the purchase price was inadequate, resulting in a windfall to Hilco.
17 I consider each of these arguments.

18 A. Good Faith Purchaser

19 "Typically, lack of good faith is shown by 'fraud, collusion
20 between the purchaser and other bidders or the trustee, or an attempt to
21 take grossly unfair advantage of other bidders.'" Ewell v. Diebert (In
22 re Ewell), 958 F.2d 276, 281 (9th Cir. 1992), quoting from Community
23 Thrift & Loan v. Suchy (In re Suchy), 786 F.2d 900, 902 (9th Cir. 1985).
24 Ian Fredericks, an attorney with Hilco's legal department, testified that
25 Hilco became aware of the Pacific Cargo auction sale opportunities based
26 on a direct contact from Equity Partners. After performing due

1 diligence, Hilco determined to participate in the auction sale to pursue
2 the acquisition of all of Pacific Cargo's rolling stock for a maximum
3 total purchase price of \$1.1 million. Hilco subsequently participated in
4 the auction, consistent with the required bidding procedures, but was
5 outbid by the credit bids of Paccar, FMCC and Ally for their respective
6 vehicle collateral. Hilco had the winning bid only for the GE Capital
7 collateral. Mr. Fredericks testified that Hilco had no previous
8 connection or affiliation with Pacific Cargo. Jonathan Reich, Hilco's
9 agent at the auction, had a previous connection with Equity Partners, but
10 that prior relationship had no influence or impact on Hilco's
11 participation in the Pacific Cargo auction sale. There is no evidence in
12 the record of any inappropriate conduct, fraud or collusion with other
13 bidders by Hilco, or any evidence of preferential treatment of Hilco,
14 with respect to the Pacific Cargo auction sale. GE Capital admitted as
15 much at the Hearing. Hilco was just looking to make a profitable deal on
16 acquisition of the Pacific Cargo rolling stock. I find that Hilco
17 participated in the Pacific Cargo auction sale in good faith.

18 B. Adequacy of the Sale Price

19 There is some authority in the Ninth Circuit that looks to a
20 benchmark "value," e.g., seventy-five percent of appraised value, as a
21 standard for determining whether a buyer in fact was a "good faith
22 purchaser for value." See, e.g., In re Abbotts Dairies of Pa., Inc., 788
23 F.2d 143, 149 (9th Cir. 1986), citing In re Rock Indus. Mach. Corp., 572
24 F.2d, 1195, 1197 n.1 (7th Cir. 1978). However, ultimately, the Ninth
25 Circuit has concluded that a "good faith purchaser" determination is not
26 dependent on a sale generating a specific level of value, particularly in

1 a public auction context. "An auction is sufficient to establish that
2 the purchaser has paid value so long as the purchaser bought the debtor's
3 property in good faith." In re Onouli-Kona Land Co., 846 F.2d at 1174
4 n.1 (emphasis in original), citing In re Abbotts Dairies of Pa., Inc.,
5 788 F.2d at 149. In other words, the purchase price established through
6 a noncollusive auction sale is adequate evidence of "value" to determine
7 the good faith of the purchaser.

8 I concede, as I did in colloquy with GE Capital's counsel at
9 the Hearing, that if GE Capital had been present at the Pacific Cargo
10 auction sale, the \$180,000 purchase price paid by Hilco for GE Capital's
11 collateral would not have been the winning bid. GE Capital had filed a
12 secured proof of claim, to which no objection had been filed, in the
13 amount of \$1,005,289.78, that it could have credit bid up to its full
14 amount, or at least up to the value of the GE Trucks stated in Pacific
15 Cargo's schedules, \$910,251.21 (Docket No. 1, Schedule B25). As
16 previously noted, Hilco lost in its bids to acquire other rolling stock
17 of Pacific Cargo to the credit bids of Paccar, FMCC and Ally. However,
18 GE Capital was not there, and in the public auction that proceeded, Hilco
19 submitted the winning bid for the GE Trucks.

20 Will Hilco make some money on its acquisition of the GE Trucks?
21 Undoubtedly. As noted by GE Capital in its Supplemental Brief at p.6,
22 "Hilco is not an end user of commercial trucks, but is rather in its own
23 right a reseller of assets and a self described 'Organization Dedicated
24 to Asset Valuation, Monetization, and Advisory Services.'" Docket No.
25 512, at p.6. Hilco was exactly the sort of equipment purchaser that
26 Equity Partners was targeting in its sale promotion efforts to maximize

1 the value to be realized for Pacific Cargo's estate.

2 While I found the testimony of Mr. Dan Pahl, GE Capital's
3 appraiser witness, less persuasive than the testimony of Jody Bacque,
4 Hilco's VP-Asset Sales, as to the values that can be realized from resale
5 of the GE Trucks, Hilco's profits on resale should be substantial.
6 However, I do not find the potential profits from such resales
7 unconscionable or providing Hilco with an inappropriate windfall. Hilco
8 was an active bidder at the Pacific Cargo auction sale in order to pursue
9 a potentially profitable business opportunity. It submitted the winning
10 bid to acquire the GE Trucks as a good faith purchaser. I do not find
11 the amount of Hilco's winning bid so inadequate that it supports setting
12 aside the Hilco Sale Order.

13 IV. CONCLUSION

14 Based on the foregoing findings and conclusions, I will deny GE
15 Capital's Motion to Vacate. Counsel for Hilco should submit a
16 straightforward order, consistent with this Memorandum Opinion, denying
17 the Motion to Vacate within the next ten days.

18 ###

19 cc: Margot D. Lutzenhiser, Esq.
20 Alexander Terras, Esq.
21 Aaron B. Chapin, Esq.
22 Wilson C. Mulheim, Esq.
23 Susan S. Ford, Esq.
24 Timothy A. Soloman, Esq.
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26